

15 March 1972

**OSD REVIEW COMPLETED**

**MEMORANDUM FOR THE RECORD**

**SUBJECT:** Hearings by Special Subcommittee on Intelligence on  
H. R. 9853 to Establish a National Commission on  
the classification and protection of Information

1. The Special Subcommittee on Intelligence of the House Armed Services Committee, chaired by Representative Nedzi, continued its hearings on H. R. 9853. On 9 March, Mr. Joseph Liebling, Deputy Assistant Secretary of Defense (Security Policy), testified and Mr. Fred Buzhardt, General Counsel, Department of Defense, continued his testimony. On 13 March, Mr. Ralph Erickson, Assistant Attorney General, Office of Legal Counsel, Department of Justice, testified. Mr. [redacted] Office of Security, and the undersigned were in attendance at both hearings.

2. Mr. Liebling presented a statement: on current major security policies and practices within DOD; actions taken and proposed to improve the DOD security program; and future actions to meet the objectives of the new Executive Order on classification and declassification. He listed major changes taken by DOD during the past year resulting from extensive reviews of its security practices and procedures. The classification program was considerably tightened through the reduction of individuals authorized to classify Top Secret and the declassification of large volumes of classified documents. He also noted the apparent effectiveness of the DOD moratorium on the further acquisition of filing cabinets. He outlined briefly the DOD personnel security program. The total cost of personnel investigations for FY 1971 was \$53,615,038. This included 1,151,496 NAC's at \$5.44 each and 184,154 background investigations at an average cost of \$268 each. As the result of the President's directive in June 1971, DOD had reduced TS clearances by 31% and if maintained, this would result in saving \$7 million over future years. The Subcommittee complimented Mr. Liebling on a comprehensive statement.

OSD review(s) completed.

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3. The Chairman continued his questioning of Mr. Buzhardt covering Mr. Buzhardt's opening statement before the Subcommittee. Mr. Buzhardt acknowledged that the new Executive Order is vague in certain areas. He related how DOD would implement the Order and felt that the DOD approach would be shared by the other departments and agencies. As to the merits of H. R. 9853, Mr. Buzhardt did not feel a permanent Commission was necessary since the Interagency Classification Review Committee, comprised of State, Defense, Justice, AEC, CIA and NSC Staff, and created under the new Executive Order, will basically perform the same function. When questioned by the Chairman as to which would prevail, a statute or an Executive Order, Mr. Buzhardt had to acknowledge that the statute would supersede. For an example, Mr. Buzhardt noted the Atomic Energy Act exclusively provides for the protection and handling of Restricted Data and such information is totally excluded from the new Executive Order.

4. Mr. Erickson, in his statement, presented the legal basis for Executive action to classify information. The authority rests on a constitutional Executive power and is not statutory, though statutes have recognized this authority. He acknowledged the problems stem from over-classification or maintaining a classification longer than necessary. Mr. Erickson stated the position of Justice, that if the new Executive Order is faithfully implemented, it should solve most of the problems and the Commission under H. R. 9853 would be duplicative. He felt that Congress should exercise fully its normal oversight responsibilities and if the problems are not resolved, then perhaps a Commission such as proposed in H. R. 9853 might warrant consideration.

5. The Chairman asked Mr. Erickson whether there were any provisions that Justice desired in the new Order which the White House rejected. Mr. Erickson could recall none. A discussion followed on several possible problems with the Order such as: The possible proliferation of the number of persons authorized to classify Confidential; concern that the term damage to "national security" might be extended to include surely domestic matters; the permitted access by former Government officials to information which they originally classified; the lack of clear requirements that an originator sign his name to a document; and the lack of any sanctions. In regard to the latter, Mr. Erickson noted the deficiencies in the espionage laws and that the Administration has been studying the problem through the Brown Commission and the codification of the criminal laws under Title 18. He indicated that specific proposals resulting from these studies should be made in the near future.

6. The hearings will continue with Mr. Buzhardt continuing and witnesses from other agencies and outside groups to be called.

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Assistant Legislative Counsel

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